



DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

[Docket No. FHWA-2018-0046]

**Application from the State of Arizona to the Surface Transportation Project
Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning
Environmental Responsibilities to the State**

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed MOU and request for comments.

SUMMARY: This notice announces that FHWA has received and reviewed an application from the Arizona Department of Transportation (ADOT) requesting participation in the Surface Transportation Project Delivery Program (Program). This Program allows for FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act of 1969 (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA has determined the application to be complete and developed a draft MOU with ADOT outlining how the State would implement the program with FHWA oversight. The FHWA invites the public to comment on ADOT's request, including its application and the proposed MOU, which includes the proposed assignments and assumptions of environmental review, consultation, and other activities.

DATES: Please submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Facsimile (Fax): 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor Room W12-140, Washington, DC 20590.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Anthony Sarhan, Assistant Division Administrator, Federal Highway Administration Arizona Division, 4000 North Central Avenue, Suite 1500, Phoenix, AZ 85012-3500, 7:30 a.m. – 4:30 p.m. (MST), (602) 379-3646, *Anthony.Sarhan@dot.gov*.

Steven Olmsted, NEPA Assignment Manager, Arizona Department of Transportation, Environmental Planning, 1611 West Jackson, Mail Drop EM02, Phoenix, AZ 85007, (602) 712-6421, *solmsted@azdot.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Federal Register's home page at <http://www.archives.gov>. An electronic version of the application materials and proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at <http://www.regulations.gov/>.

Background

Section 327 of title 23, United States Code (23 U.S.C. 327), allows the Secretary of the U.S. Department of Transportation (Secretary) to assign, and a State to assume, responsibility for all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal-aid highway projects within the State pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

Under the proposed MOU, FHWA would assign to the State, through ADOT, its responsibility of making project-level decisions in relation to NEPA on highway projects within the State of Arizona that are proposed to be funded with Title 23 funds or otherwise require FHWA approval, and that require preparation of a categorical exclusion

(CE) determination, environmental assessment (EA), or environmental impact statement (EIS) with the exception of the following:

(1) EIS projects— South Mountain Freeway; Interstate 11 Corridor Tier 1 EIS, Nogales to Wickenburg; Sonoran Corridor Tier 1 EIS;

(2) EA projects - State Route 303; Interstate 10 to State Route 30;

Projects excluded in (1) and (2) above, except the South Mountain Freeway, will be retained by FHWA until either a) expiration of the statute of limitations period for projects on which a limitation of claims notice will be issued under 23 U.S.C. 139(l), or b) completion of the NEPA process on projects on which such notice will not be issued. The ADOT agrees to be responsible for any re-evaluations needed under 23 CFR 771.129 or other environmental reviews needed for such projects thereafter. The FHWA will retain responsibility for environmental review, consultation, or other actions required under any Federal environmental law for the South Mountain Freeway until the project is complete;

(3) highway projects authorized under 23 U.S.C. 202, 203, and 204, unless the project will be designed and/or constructed by ADOT;

(4) projects that cross or are adjacent to international boundaries;

(5) any project that crosses State boundaries;

(6) Projects advanced by direct recipients of Federal-aid Highway funds other than ADOT, under, but not limited to, the following programs:

1. Transportation Investment Generating Economic Recovery (TIGER) and Better Utilizing Investments to Leverage Development (BUILD) discretionary grants and other competitive grant programs; and
2. Transportation Infrastructure Finance and Innovation Act (TIFIA) Credit Program.

The assignment would give the State the responsibility to conduct environmental review, consultation, and other related activities for project delivery under the following laws and requirements:

Air Quality

- Clean Air Act, 42 U.S.C. 7401—7671q, with the exception of conformity determinations

Executive Orders (E.O.) Relating to Highway Projects

- E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR parts 650.113 and 650.115)
- E.O. 11990, Protection of Wetlands
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species, as amended by E.O. 13751, Safeguarding the Nation from the Impacts of Invasive Species
- E.O. 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure

FHWA-Specific

- Efficient Project Reviews for Environmental Decision Making, 23 U.S.C. 139
- Environmental Impact and Related Procedures, 23 CFR part 771
- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601—9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901—6992k
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671—9675

Historic and Cultural Resources

- Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. 312501—312508
- Archeological Resources Protection Act of 1979, 16 U.S.C. 470(aa)—(mm)
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001—3013; 18 U.S.C. 1170
- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101 et seq.

- 23 U.S.C. 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C.303 and implementing regulations at 23 CFR part 774

Noise

- Compliance with the noise regulations in 23 CFR part 772
- Noise Control Act of 1972, 42 U.S.C. 4901—4918

Parklands and Other Special Land Uses

- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302—200310
- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138, 49 U.S.C. 303 and implementing regulations at 23 CFR part 774

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201—4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251-1387 (Sections 319 and 401, 402, 404, and 408)
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777
- Flood Disaster Protection Act, 42 U.S.C. 4001—4130
- Rivers and Harbors Act of 1899, 33 U.S.C. 403
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f—300j-26
- Wetlands Mitigation, 23 U.S.C. 119(g) and 133(b)(14)
- Wild and Scenic Rivers Act, 16 U.S.C. 1271—1287

Wildlife

- Fish and Wildlife Coordination Act, 16 U.S.C. 661—667d
- Migratory Bird Treaty Act, 16 U.S.C. 703—712
- Bald and Golden Eagle Protection Act, 16 U.S.C. 668-668d
- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531-1544

The Secretary's responsibilities for government-to-government consultation with Indian tribes, as defined in 36 CFR 800.16(m), are not assigned to or assumed by ADOT under the proposed MOU. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes. The ADOT will conduct routine consultation with Indian tribes and understands that an Indian tribe has the right for government-to-government consultation with FHWA upon request.

Nothing in the proposed MOU shall be construed to permit ADOT's assumption of the Secretary's responsibilities for conformity determinations required by Section 176 of the Clean Air Act (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

The assignment under this part does not alter the scope and terms of the Section 326 MOU signed on January 3, 2018, between ADOT and FHWA. As applicable, ADOT will conduct all environmental reviews authorized under the terms of that MOU.

On the cover page of each EA, Finding of No Significant Impact (FONSI), EIS, and Record of Decision (ROD) prepared under the authority granted by this MOU, and for memoranda corresponding to any CE determination it makes, ADOT shall insert the following language in a way that is conspicuous to the reader:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by ADOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated [MMDDYYYY] and executed by FHWA and ADOT.

The ADOT will also disclose to the public, agencies and tribes as part of agency outreach and public involvement procedures, the above disclosure.

The ADOT will not make any determination that an action constitutes a constructive use of a Section 4(f) property under 49 U.S.C. 303/23 U.S.C. 138 without first consulting with FHWA and obtaining approval of such determination.

A copy of the proposed MOU may be viewed on the online docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on the ADOT website at:
<https://www.azdot.gov/business/environmental-planning/ce-assignment-and-nepa-assignment>.

The FHWA Arizona Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU. Any final MOU approved by FHWA may include changes based on comments and consultations relating to the proposed MOU and will be made publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 771.101-139; 23 CFR 773.109; 40 CFR 1507.3; and 49 CFR 1.85.

Issued on: February 4, 2019.

Brandye L. Hendrickson,
Deputy Administrator,
Federal Highway Administration.

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